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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,480	04/19/2004	Cassandre Michelle Fecht	DC4998CIP1	3304

7590 02/23/2009
Dow Corning Corporation
Intellectual Property Dept. - CO1232
P.O. Box 994
Midland, MI 48686-0994

EXAMINER

ROBERTS, LEZAH

ART UNIT	PAPER NUMBER
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1612

MAIL DATE	DELIVERY MODE
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02/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/827,480

Applicant(s)

FECHT ET AL.

Examiner

LEZAH W. ROBERTS

Art Unit

1612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 16 January 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 2, 4-7, 9, 11 and 12.
Claim(s) withdrawn from consideration: 13 and 14.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612

/Lezah W Roberts/
Examiner, Art Unit 1612

Continuation of 11. does NOT place the application in condition for allowance because:

In regards to Hiwatari, the compounds having structures 9 and 10

encompass the formulas of the instant claims. The claims disclose several formulas that include various compounds encompassed by said formulas. The core silicone structure of the instant claims may have repeating units ranging from 1 to 500 whereas the corresponding core of the reference, having two variables, will each have a range of 1-1000. The end groups of the reference comprise formula 10 wherein the ethylene oxide group and the propylene oxide group have repeating units ranging from 0-50. Therefore one in the art would be able to envision the compound of the instant claims.

In regards to Candau, the instant claims encompass various compounds. Candau discloses compounds encompassed by the various compounds recited in the instant claims. Compounds of formula II in the reference encompass the instant claims and one of skill in the art would be able to envision the compounds based on the disclosure of the reference. The core silicone structure of the reference may have repeating units ranging from 5 to 300 and the group in the instant claims corresponding to this group may have repeating units ranging from 1 to 500. Therefore in this regard, the compounds of the reference are less broad than those of the instant claims. In regards to the oxyalkylene side chains, this group is encompassed by the definition of R of formula 1 when s is 3, t is 1 and u is 0 and R1 is H. Therefore the reference anticipates the instant claims.

In regards to Kumar et al., the compounds of the instant claims are encompassed by the formula disclosed in column 23. The variables a and b may range preferably from 1-30 and 1-50 respectively. G is an oxyalkylene group which encompasses R1 of the instant claims because p may range from 1-5, m ranges from 1-50 and n ranges from 0-30. When p is 3, m is 1, n is 0 and Rb is hydrogen, the formula encompasses the instant claims and one of skill in the art would be able to envision the compound when reading the reference.

The Examiner notes that claim 4 has been inadvertently left out of the rejections and Applicant does not address that the claim was not rejected. It is also rejected under 102 (b) as being anticipated by Hiwatari, Candau and Kumar. The addition of claim 4 does not affect the grounds of rejection or add issues not already addressed by Applicant's reply.